IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

JESSE ELLIS NICKERSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,

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In the Supreme Court of the United States

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No. 1395

JERAL BLISS NICKERSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After waiving trial by jury, petitioner was convicted in the United States District Court for the District of Kansas for failing to report to his local Selective Service Board for induction into the Armed Forces, in violation of 50 U.S.C. App. 462. The court committed petitioner to the custody of the Attorney General as a young adult offender for observation and study, pursuant to 18 U.S.C. 5010(e). Due to the appeal herein, such observation and study have not been completed and petitioner has not yet been

sentenced. Petitioner's conviction was affirmed by the court of appeals (Pet. App. A5-A10).

Following petitioner's registration with the Selective Service System on July 14, 1960, he was classified 1-A. He was later ordered to report for physical examination and, when he failed to comply, to report for induction. A subsequent request for reclassification as a conscientious objector was rejected. After two additional orders to report for physical examination, petitioner was again ordered to report for induction on November 8, 1965, which was later extended to December 20, 1965. Petitioner's failure to report on that date resulted in this prosecution.

The sole defense offered at petitioner's trial was that he should have been classified as a conscientious objector. After he had been convicted and an appeal taken, petitioner moved for a remand to the district court to hear evidence regarding his claim that on July 22, 1964, he had been charged with a felony in the State of Kansas for non-support of his minor child and that this had a bearing on the propriety of his conviction for failure to report for induction. The court of appeals denied the motion and affirmed the conviction.

Petitioner presently contends that he should have been informed of his right to counsel by Selective Service System officials in the proceedings before them, citing *Miranda* v. *Arizona*, 384 U.S. 436, and *Escobedo* v. *Illinois*, 378 U.S. 478. Had he been so advised, petitioner urges, he would have been able to raise as a defense the pendency of felony charges against him. Petitioner is mistaken on both points.

Proceedings before a draft board are administrative, not criminal, in nature, and a registrant has no Sixth Amendment right to counsel at such proceedings. *United States* v. *Capson*, 347 F.2d 959, 962 (C.A. 10), certiorari denied, 382 U.S. 911; *United States* v. *Sturgis*, 342 F.2d 328, 332 (C.A. 3), certiorari denied, 382 U.S. 879; *Imboden* v. *United States*, 194 F.2d 508, 513 (C.A. 6), certiorari denied, 343 U.S. 957; *Niznik* v. *United States*, 173 F.2d 328, 336 (C.A. 6), certiorari denied, 337 U.S. 925; *Peterson* v. *United States*, 173 F.2d 111, 115 (C.A. 6), certiorari denied, 337 U.S. 925; *United States* v. *Pitt*, 144 F.2d 169, 172 (C.A. 3); *Ex parte Stanziale*, 138 F.2d 312, 314 (C.A. 3), certiorari denied *sub nom. Stanziale* v. *Paullin*, 320 U.S. 797. Contrary to petitioner's assertions, nothing in this court's decisions in *Miranda* or *Escobedo*, or in the other cases referred to by him, requires a different result. Nor is *Kennedy* v. *Mendoza-Martinez*, 372 U.S. 144, on which petitioner purports to rely, at all pertinent here. Moreover, the pendency of criminal charges against petitioner would not constitute a valid ground for resisting induction. Army regulations such as that referred to by petitioner are for the benefit of the Armed Services, not the registrant. *Doty* v. *United States*, 218 F.2d 93 (C.A. 8); *United States* v. *Bouziden*, 108 F.Supp. 395 (W.D. Okla.).

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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